

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Bobby T. Sheppard,	:	Death Penalty Case
	:	
Petitioner,	:	Case No. 1:00cv493
	:	
-vs-	:	Judge Walter Herbert Rice
	:	
Margaret Bagley, Warden,	:	Magistrate Judge Merz
	:	
Respondent.	:	

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF PETITIONER'S
MEMORANDUM IN OPPOSITION TO RESPONDENT'S OBJECTIONS**

In support of Magistrate Merz's finding of Prosecutorial Misconduct, Petitioner submits the decision issued on November 15, 2004 by the United States Supreme Court in *Smith v. Texas* (2004), 125 S.Ct. 400, attached hereto. In *Smith*, the Supreme Court again reaffirmed two critical principles: 1) “[e]vidence of significantly impaired [mental] functioning is obviously evidence that ‘might serve as a basis for a sentence less than death’”; and 2) that the jury must be allowed “to give full consideration and full effect to mitigating circumstances” in choosing the appropriate sentence. *Id.* at 401, 405 and 406. Improper interference with a jury’s ability to “give full consideration and full effect to mitigating circumstances” is a violation of the Eighth Amendment. *Id.* at 407.

In this case, Bobby Sheppard’s prosecutors engaged in prosecutorial misconduct that deprived Plaintiff of his Eighth Amendment right to have the jury give full consideration to his mitigating evidence of mental illness. For that reason, Petitioner Sheppard was deprived – as was the petitioner in *Smith* – of his rights under the Eighth and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

s/Geoffrey J. Moul

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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Charles L. Wille
Assistant Attorney General
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s/Geoffrey J. Moul